

From: [LaBombard, Will](#)
To: [Moore, Gary](#)
Subject: RE: Additional Information
Date: Thursday, February 21, 2019 10:01:24 AM

Hi Gary,

FAR 31.205-6(m)(2) says that a company-owned or -leased vehicle cannot be charged to the contract for times that it is used to travel from an employee's residence to the employee's office because using a vehicle for personal use like this is considered a fringe benefit of working for the company. Because all fringe benefits paid to employees are already included in the Employee Compensation Plan they submitted when they bid on the contract, and the costs for those benefits are already rolled into their loaded labor rates, allowing them to charge that time from residence to office as travel would be the gov't paying the fringe benefit a second time. Here's how it's worded in FAR 31.205-46:

"[the] portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable"

As for the rest, are you available next week to sit down and talk?

Will LaBombard
214-665-7199

From: Moore, Gary
Sent: Thursday, February 21, 2019 9:38 AM
To: LaBombard, Will <LaBombard.Will@epa.gov>
Subject: Additional Information

Hey Will,

I am not sure how FAR FAR 31.205-6(m)(2) applies in this case. I want to be reasonable on this issue with the contractor and I wanted to make it fair for everyone but I wanted to let you know that:

1. I did not require them to park the rental vehicle at the Weston office and they could have taken it to their homes since they were traveling to/from the jobsite everyday. If this were the case I would assume that the 50 miles would have applied from their residence since that would have been their move/demove point. It appears that this is the way we allowed it anyway.
2. Also, I think the 50 miles is based up radius not driving miles. From the Weston office to the site is about a 40 mile radius and from our downtown office it is approximately a 55 mile radius. I do not believe that the employees from Weston live outside of a 50 mile radius from their residence to the site. I believe that only Austin Lindsey may live outside the 50 mile radius from his residence.

We do not get local sites very often but we need to get this straight so that everyone knows what the rules are so we don't get into this situation.

Thanks
Gary Moore

From: LaBombard, Will
Sent: Wednesday, February 20, 2019 4:41 PM
To: Moore, Gary <Moore.Gary@epa.gov>
Subject: RE: FJ Doyle Salvage TDD - travel issue

Hey Gary,

We knew that the truck was a rental; this was the reason for including the language about FAR 31.205-6(m)(2).

Will LaBombard
214-665-7199

From: Moore, Gary
Sent: Tuesday, February 19, 2019 7:14 PM
To: LaBombard, Will <LaBombard.Will@epa.gov>
Subject: RE: FJ Doyle Salvage TDD - travel issue

Will:

I wanted to let you know that the truck that Weston is using is a rental truck that EPA is paying for (rental cost/rental insurance/fuel) through the contract specifically for this site. The EPA has not restricted the contractor from taking this vehicle to their residence and commute to/from their residence.

I am not necessarily complaining about the decision but it is difficult for us to determine the rules. So basically, the new FTR for determining the 50 mile rule is that the approved travel distance is based upon your commute from your home to office to site based upon the quickest method available.

Thanks
Gary Moore

From: LaBombard, Will
Sent: Tuesday, February 19, 2019 2:29 PM
To: Moore, Gary <Moore.Gary@epa.gov>
Cc: Petersen, Chris <petersen.chris@epa.gov>; Smith, Monica <smith.monica@epa.gov>; Flemming, Tongee <flemming.tongee@epa.gov>
Subject: FW: FJ Doyle Salvage TDD - travel issue

Hi Gary,

Just a heads up that the CO has resolved the travel issue for the FJ Doyle Salvage TDD. Please let me know if you have any questions. Thanks!

Will LaBombard
214-665-7199

From: Delaney, Brian
Sent: Tuesday, February 19, 2019 1:52 PM
To: LaBombard, Will <LaBombard.Will@epa.gov>; c.shappee@westonsolutions.com
Cc: Delaney, Brian <Delaney.Brian@epa.gov>
Subject: RE: FJ Doyle Salvage TDD - travel issue

To All and for clarification,

I concur that the contractor be allowed to charge travel time from the Weston office to the site IAW with contract clause C.1(2)(b), the FTR, and FAR 31.205-46, but not be allowed to charge travel time from the employees' residences to the Weston office IAW FAR 31.205-6(m)(2)."

Brian K. Delaney
Contracting Officer

Environmental Protection Agency
1445 Ross Avenue Suite 1200
Dallas Texas 75202
Office Phone 214-665-7473
Email: Delaney.Brian@epa.gov

From: LaBombard, Will
Sent: Tuesday, February 19, 2019 11:02 AM
To: Delaney, Brian <Delaney.Brian@epa.gov>
Subject: FJ Doyle Salvage TDD - travel issue

Hi Brian,

When you get a chance, we could use the CO's official determination on this situation. Reference TDD # EP-S5-17-02/0001/17-004 which has a POP start date of 8/9/2017. I apologize in advance for the lengthy email, but I want to give you all of my thoughts on the matter up front.

Per Gary's email below, the F.J. Doyle site in Leonard, TX is within 50 miles of Weston's Dallas office (primary mobilization location per the contract). Gary is making the point that getting to the site is routine "local transportation" of less than 50 miles. Therefore, IAW contract clause H-42, the

contractor cannot begin charging time until they arrive at the F.J. Doyle site.

Weston has made the point that site personnel must travel from their residences to the Weston office in order to pick up the truck that they use for travel back and forth to the site (because the use of POVs and charging for mileage was not authorized), and that the sum of the distance to their office plus the distance from the office to the site exceeds 50 miles; therefore, the contractor contends that this constitutes travel per contract C.1(2)(b) and the FTR, and that contract clause H-42 does not apply.

The intent or spirit of the language in contract clause C.1(2)(b) appears to state that if a contractor is required to travel a distance greater than 50 miles for business ordered by the EPA, then the contractor should charge that time as travel. If the distance travelled is less than 50 miles, then the contractor should not charge the time as travel. The clause says in part, “For any employee, routine daily commuting time (less than 50 miles one-way) to and from the work site is not an allowable charge under the contract...” and “Travel expenses are allowable for each employee required on-site if the work site is in excess of fifty (50) miles one way from the individual's place of employment or residence, whichever is less....”

On the one hand, the employee language appears to contemplate the distance required for the individual employee's total commute, not necessarily just the distance from their office to the site. This is consistent with the contractor's argument because the total commute distance is greater than 50 miles. On the other hand, the use of “place of employment or residence, whichever is less” appears to apply the clause to just the shorter portion of the commute rather than its entirety. This is consistent with Gary's argument because the distance from the Weston office to the site is less than 50 miles, so it doesn't matter if the employee's total commute (with or without a stop at their office) is greater than 50 miles.

The confounding factor here is the required use of the truck which is kept at the Weston office overnight for security. If the EPA requires the use of a truck and that the truck be stored at a secure location (specifically not an employee's residence), then in this case, the EPA is requiring a commute greater than 50 miles; applying the whichever is less language does not appear to be in the spirit of the contract clause. Therefore, it is my recommendation that the contractor be allowed to charge travel time from the Weston office to the site IAW with contract clause C.1(2)(b), the FTR, and FAR 31.205-46, but not be allowed to charge travel time from the employees' residences to the Weston office IAW FAR 31.205-6(m)(2).

There are three additional considerations:

1. The FTR speaks of “duty stations” when determining cost allowability. Weston utilized three employees rotating daily through the response period, so I am unsure if these individuals meet the requirements of having the F.J. Doyle site as their duty station, or if their duty station remained their Dallas office. FTR is not my forte, so this may not be a relevant factor after other things considered.
2. The contractor also believes that it is most appropriate that they begin charging time as soon as they begin transporting equipment to the site regardless of distance, which they argue includes the rental truck. I haven't found any language to this effect in the contract, so I don't

understand this point; but maybe I just missed said language, or maybe it's from the FTR.

3. The contractor has also informed me that throughout the TDD POP, the field personnel have regularly conducted some amount of work during the commute to/from the site because the time was being charged to the site anyway (internal meetings via phone, report preparation, etc.).
4. As noted above, this TDD began in 2017. If you determine that the contractor's travel is actually local transportation IAW contract clause H-42, would this determination apply retroactively to the beginning of the TDD? Or only going forward from the date of your determination? Note that field work is nearly complete, so this is really more a question of whether you would intend to ask the contractor for a credit if the time should not have been charged as travel.

If you have any questions or need any additional details, please let me know. Thanks!

Will LaBombard
214-665-7199

From: Moore, Gary
Sent: Sunday, February 17, 2019 4:12 PM
To: LaBombard, Will <LaBombard.Will@epa.gov>
Subject: FJ Doyle Salvage - Weston Solutions

Will,

It appears that Weston is charging me travel time to/from the FJ Doyle Salvage Site. The site is less than 50 miles and therefore they are not allowed to charge for travel to and from the site (commute). I will allow them to charge the travel time if they are transporting samples or are required to pick-up equipment (except for the rental truck they are using to commute to/from the site). I am not allowing anyone that is within 50 miles of the site to charge travel time to/from the site.

For example, I live 41.5 miles from the site and I do not get to charge my travel time to/from the site. Also, I have to drive from my house to the Fairview Fire Station to pickup the EPA truck and then commute to/from the fire station to the site which is 37.8 miles.

For Weston, it is 46.2 miles from their office to site based upon MapQuest.

I need a response back from you confirming that you guys are not going to allow them to charge their commute time to/from the site as this is against the travel rules.

Thanks,

Gary W. Moore (6SF-ER)
Federal On-Scene Coordinator
U.S EPA Region 6

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